

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**LESLIE CHOKA,**

Plaintiff,

No. CV 10-702-ST

v.

OPINION AND ORDER

**THOMAS MCCLELLAN, aka Thomas  
McCallan; OREGON DEPARTMENT OF  
MOTOR VEHICLES; and JOHN DOES A to Z,**

Defendants.

**MOSMAN, J.,**

On December 28, 2010, Magistrate Judge Stewart issued her Findings and Recommendation ("F&R") (#37) in the above-captioned case recommending that I grant the State of Oregon's Motion to Dismiss (#25), and grant in part and deny in part Thomas McClellan's Motion to Dismiss (#29). No objections were filed.

**STANDARD OF REVIEW**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the

court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I ADOPT Judge Stewart's F&R (#37) as my own, and I GRANT the State of Oregon's Motion to Dismiss (#25), and DISMISS Count II of the Complaint with prejudice. I also GRANT Mr. McClellan's Motion to Dismiss (#29) as to Count I alleged against Mr. McClellan in his individual capacity, and I DISMISS that claim without prejudice and with leave to amend; I otherwise DENY McClellan's Motion to Dismiss.

IT IS SO ORDERED.

DATED this 11th day of February, 2011.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court